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In re Application of  
DUNKEL et al.  
Application No. 10/538,242  
PCT No.: PCT/EP03/13498  
Int. Filing Date: 01 December 2003  
Priority Date: 13 December 2002  
Attorney Docket No.: CS8535/LeA 36,334  
For: BIPHENYLCABOXAMIDES

DECISION ON PETITION  
UNDER 37 CFR 1.181

This decision is issued in response to applicant's "Petition under 37 CFR 1.181" filed in the United States Patent and Trademark Office (USPTO) on 23 March 2007 which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181. No petition fee is required.

**BACKGROUND**

On 01 December 2003, applicant filed international application no. PCT/EP03/13498 which claimed a priority date of 13 December 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 01 July 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 13 June 2005.

On 07 June 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee; a copy of the international application; and a preliminary amendment.

On 30 December 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 23 March 2007, applicant filed the petition considered herein. The petition states that a declaration/power of attorney was submitted, by facsimile, on 15 December 2005.

### DISCUSSION

The present petition is accompanied by a facsimile cover sheet entitled "Submission of Missing Parts of Application under 35 U.S.C. 371" that references an attached declaration, contains the authorization to charge Deposit Account No. 50-2510 dated 15 December 2005; and includes confirmation report from applicants' facsimile machine. The petition also includes a copy of an executed declaration.

The application file does not contain the materials purportedly filed by facsimile on 15 December 2005. In order to confirm the 15 December 2005 filing of the materials accompanying the present petition, applicants must satisfy the requirements set forth in 37 CFR 1.8(b), which states the following:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Applicant has informed the Office of the previous transmission of the correspondence promptly after becoming aware that Office has no evidence of receipt of the correspondence. Therefore item (1) is satisfied.

As to item (2), applicant has not provided an additional copy of the previously transmitted correspondence and certificate. The exhibits filed with the present petition are not a true and correct copy of the papers submitted on 15 December 2005. Further, a copy

of the Certificate of Transmission for papers filed 15 December 2005 has not been included with the present petition. Therefore, item (2) has not been satisfied.

Referring to the statement required by 37 CFR 1.8(b)(3), MPEP § 512 states the following: "If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission."

The present petition, which is signed by Richard E.L. Henderson, states that the attached materials were submitted by facsimile on 15 December 2005. However, Mr. Henderson does not state "how he has firsthand knowledge of the previous mailing or transmission" as required by MPEP § 512; and the petition does not include a Certificate of Transmission or a confirming statement from the person who executed the Certificate of Transmission on the response materials. Based on the above, the present petition does not satisfy the requirement of 37 CFR 1.8(b)(3).

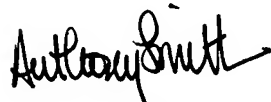
### CONCLUSION

Applicants' petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The application, by operation of law, is **ABANDONED**.

Any request for reconsideration must be submitted within **TWO (2) MONTHS** of the mail date of the present decision and must include the materials required to satisfy 37 CFR 1.8(b)(2) and (3), as discussed above.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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